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No. 03-351

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

REGGIE AND REBECCA B., TAMMY G.,
ELAINE R. and RACHEL C.,

Petitioners,

v.

JEB BUSH, as the Governor of the State of Florida, *et al.*,

Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

Respondents urge this Court to deny the petition, but do not dispute that this Court's decisions applying *Younger* abstention have been limited to cases where federal plaintiffs were seeking to enjoin state judicial or quasi-judicial proceedings via an injunction or declaratory relief. Unlike in any of those cases, petitioning foster children here do not seek to enjoin ongoing state juvenile court review proceedings, despite respondents' mischaracterizations to the contrary. Instead, they seek systemic relief directed at creating minimum capacity within Florida's foster care system to provide safe foster homes and adequate supervision of, and services to, the foster children in the state's custody as the Constitution requires. The *Younger* abstention doctrine, as articulated in numerous decisions by this Court, should not be expanded to insulate from *any* federal court relief a mismanaged child welfare agency that constitutionally harms children, simply because certain aspects of those children's custodial status is periodically reviewed by the state juvenile courts. This is especially so in the case at bar where the Florida state juvenile courts undeniably lack the jurisdiction to order institutional changes in the child welfare system necessary to ensure the state's capacity to protect children in its custody from constitutional violations.

In addition to mischaracterizing the relief petitioners seek, respondents speculate that if the federal court were, at some time in the future, to order such capacity-building reforms for the child welfare agency to ensure it operates constitutionally, that would somehow interfere with ongoing individual state juvenile court proceedings reviewing individual children's custodial status. However, mere speculation cannot

satisfy the important *Younger* abstention principles set forth by this Court. In fact both the Ninth and Tenth Circuits have recognized in similar child welfare reform litigation that systemic federal court relief requiring constitutionally adequate resources, staffing and management oversight at a child welfare agency can be pursued without interfering with ongoing individual state juvenile court review proceedings. These decisions are in direct conflict with the Eleventh Circuit's decision below and are more consistent with this Court's admonition that *Younger* abstention should only be applied in the narrowest of circumstances. The erroneous decision below warrants review.

1. Respondents Mischaracterize The Relief Sought.

Respondents attempt to reconcile the decision below with this Court's *Younger* abstention jurisprudence by mischaracterizing the relief sought by petitioners. Ignoring petitioners' actual prayer for relief, respondents incorrectly suggest that the relief sought will enjoin (at least as a practical effect) decisions of the Florida juvenile courts in individual foster children's cases as to such matters as placement and medical care. *See* Opp. at 17-18. While respondents are correct that petitioners' amended complaint alleges many *harms* to foster children including dangerous and inappropriate placements and lack of medical care, *id.*, issues that could be reviewed in individual foster children's cases by the state juvenile courts, those harms are alleged in the complaint to be caused by respondents' pattern and practice of poor resource development, allocation and management.[1] *See* Opp. App. 3,

[1] The facts as alleged in petitioners' amended complaint are to be deemed true for the purposes of this petition. *See Leatherman v. Tarrant County*

41-60 ("Defendants have engaged in a pattern and practice" of failing to develop a sufficient array of placements and failing to provide sufficient staffing and staff oversight, supervision, training and management). The *relief* sought is thus not an order for a particular medical treatment or placement for any individual child, but rather an injunction of the systemic "practices" that violate all foster children's federal rights, and a remedial order ensuring the agency's future capacity to provide constitutionally required protection and services. App. 98a-99a. ("Plaintiffs . . . request that this Court: . . . 4. Permanently enjoin Defendants from subjecting Plaintiffs and the members of the class they seek to represent to *practices* that violate their federal constitutional and statutory rights; [and] 5. Order appropriate remedial relief to ensure Defendants' future compliance with the Constitution and laws of the United States and their provision of legally mandated services, protection and procedures. . . .") (emphasis added).

This distinction is not mere semantics. For example, petitioners allege that the state practices of failing to provide sufficient and adequately trained casework staff, *see* Opp. App. 43-44, failing to develop appropriate foster homes and other placements, *id.* 44-46, and failing to ensure appropriate case supervision, *id.* 42-44, 46-47, systemically cause petitioner children to be subjected to harmful foster homes and facilities, *id.* 42-43, 46, and to be deprived of medical care, *id.* 50. A pattern of such deficient state *practices*, including inadequate resource development and allocation and inadequate management oversight, are squarely due to state executive branch actions and cannot be said to be "matters ultimately decided by state dependency courts, not executive branch

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Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 165 (1993).

officials," as respondents attempt to characterize the subject of petitioners' claims. Opp. at 17.

In fact, it is undisputed that assuring the creation and maintenance of constitutionally adequate capacity within a state agency *cannot* even be the subject of state judicial oversight in Florida under the State's separation of powers doctrine. *See Dep't Health & Rehab. Servs. v. B.J.M.*, 656 So.2d 906, 913-916 (Fla. 1995) ("Decisions as to the allocation of services to children implicate a core discretionary function" protected by Florida's separation of powers and sovereign immunity doctrines from civil liability); *Brown v. Feaver*, 726 So.2d 322, 326 (Fla. Dist. Ct. App. 1999) ("The legislature has not given the courts control over the state's resources, nor could it without a constitutional amendment, and hence, the courts may not direct the Department to use them in any particular manner."). Thus, the state juvenile courts cannot do exactly what petitioning foster children asked the court below to do: review respondents' systemic policymaking, planning and prioritization decisions, including in such areas specifically alleged to be constitutionally deficient here as staffing and caseloads and the Department's maintenance of adequate foster care service arrays to meet the needs of children. *See Lee v. Dep't Health & Rehab. Servs.*, 698 So. 2d 1194, 1198-1199 (Fla. 1997); Opp. App. 43-46. The systemic federal relief requested by petitioners could not conflict with state juvenile court proceedings where there is no jurisdiction there to address those issues.

As to the systemic relief respondents concede petitioners seek, respondents rely on little more than "imagination" to vaguely speculate that federal judicial "implementation of a plan for reform" to address systemic federal violations would "collide" with individual care and custody review decisions by

the state juvenile courts.[2] Opp. at 18. Relying on such speculative interference – especially here, when the case was prematurely dismissed before a finding of liability and before any remedy was ever ordered – is an assault on this Court's caution that abstention is an "extraordinary and narrow exception," *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976) (quoting *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-89 (1959)), and is only appropriate in "carefully defined" situations. *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 359 (1989) (citing David L. Shapiro, *Jurisdiction and Discretion*, 60 N.Y.U. L. Rev. 543, 570-77 (1985)).

There is in fact no basis in this case for holding that the relief requested would result in the federal court halting or exercising control over the state juvenile court proceedings or over the state courts themselves, as is required for *Younger* abstention. That the Eleventh Circuit could envision a scenario where the federal court and the state court might address overlapping matters is insufficient to bar petitioners from pursuing in federal court the actual relief that they seek. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 928 (1975) ("the interest of avoiding conflicting outcomes in the litigation of similar issues, while entitled to substantial deference in a unitary system, must of necessity be subordinated to the claims of federalism"). This is especially so where allowing the Eleventh Circuit's decision to stand would mean that

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[2] Unfortunately, the Eleventh Circuit itself relied on a facially erroneous statement that petitioners sought a court-appointed panel with "authority to implement a systemwide plan to revamp and reform *dependency proceedings in Florida*" that would constitute "federal court oversight of state court operations." (App. 37a-38a.) (emphasis added).

petitioning foster children would be left with no judicial remedy for constitutional harms foisted on them by a state agency with inadequate staff, resources and management controls.

2. There Is A Clear Split Among The Circuit Courts That Must Be Resolved.

Respondents' protestations notwithstanding, the Eleventh Circuit's decision below squarely conflicts with other circuits' decisions on the relevant legal issue – the "directness" of the interference with state court proceedings needed to justify *Younger* abstention.[3] Importantly, the decision directly conflicts with both Ninth and Tenth Circuit decisions recognizing that the federal courts should not abstain from and dismiss outright child welfare cases seeking systemic relief that does not interfere with plaintiff children's ongoing juvenile court proceedings.

In *L.H. v. Jamieson*, 643 F.2d 1351 (9th Cir. 1981), the Ninth Circuit reversed the district court's dismissal of the case, holding that a plaintiff class of Arizona foster children was not barred by *Younger* from pursuing systemic relief despite their

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[3] That not all of the cases cited by petitioners involve children in foster care does not, as respondents apparently contend, render the circuit conflict on this legal issue a mere "phantom." *See* Opp. at 22. *Green v. City of Tuscon*, 255 F.3d 1086 (9th Cir. 2001) (*en banc*), for example, is particularly relevant despite factual distinctions. Though respondents appear to contend the case is simply about whether federal litigation by non-parties to a state proceeding may qualify for *Younger* abstention purposes, that is only the subject of a secondary, alternative holding of the case that follows a rigorous, detailed and entirely apposite primary decision based on the extent to which *Younger* abstention requires direct interference with state judicial proceedings. *See id.* at 1099-1001 & 1093-1099.

ongoing juvenile court proceedings. The relief sought in that case was an order requiring the State's development (and funding) of additional placement alternatives for plaintiff children based on the children's constitutional right to treatment while in state custody. Although such an order could admittedly (and positively) "*affect* [the] pending and ongoing state juvenile proceedings" with continuing jurisdiction over the children's placements, it was not found to *interfere* with those proceedings such as to enjoin them. 643 F.2d at 1354 (emphasis added). Just as in *L.H.*, petitioners here allege that their constitutional rights to services and protection while in custody are being violated by the respondents' system-wide failure to develop and maintain adequate foster homes. *See* Opp. App. 44-46 (alleging that the dearth of placements developed by Florida puts petitioners at risk of harm). A remedial order of the type requested by petitioners here, directing respondents to recruit additional foster homes and develop other placement alternatives for abused and neglected children in state custody, for example, would no more interfere with ongoing juvenile court proceedings than in *L.H.*

In *Joseph A. ex rel. Wolfe v. Ingram*, 275 F.3d 1253 (10th Cir. 2002), the Tenth Circuit also reversed the district court's dismissal of plaintiff New Mexico foster children's class action case based on *Younger* abstention, remanding it for a provision-by-provision analysis of a previously entered consent decree to establish which provisions, if any, so interfered with the daily operations of the juvenile court as to warrant abstention on those provisions.[4] The Tenth Circuit noted in

[4] The Tenth Circuit's decision in *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1291-1292 (10th Cir. 1999), upheld dismissal based on *Younger* abstention because there, unlike in the case at bar, plaintiffs' requested relief would have the federal court making individual "dispositions," such as custodial

particular that relief regarding such areas as training and qualifications of social workers, as well as the development of an adequate management information system, "do not appear to risk interference with state court proceedings." 275 F.3d at 1273. Similarly, petitioners here seek systemic remedial relief addressing the respondents' failure to hire and properly train a sufficient number of caseworkers and provide adequate managerial oversight. *See* Opp. App. 43-44. It is hard to imagine how a remedial order that requires minimum agency staffing and management controls could interfere with ongoing juvenile court proceedings.

Under any reading of petitioners' amended complaint and claim for relief there are innumerable remedies that the federal court could order to protect petitioners' constitutional rights that would not interfere with any aspect of the petitioners' state juvenile court proceedings. This Court should resolve the conflict between the circuits as to whether such a federal suit can proceed.

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decisions, that "would prevent the Children's Court from carrying out this function" for the three plaintiff children whose claims were at issue. A critical precursor to the Tenth Circuit's decision to affirm the district court's abstention ruling was its affirmance of the district court's denial of plaintiffs' class certification motion, *id.* at 1290 – a judicial determination never made in this case.

CONCLUSION

For the reasons stated above and in petitioners' petition, the petition for certiorari should be granted.

Date: October 10, 2003

Respectfully submitted,

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